IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 483 OF 1987

1. Ramchandra Akaram Suryavanshi
2. Bhagwan Akaram Suryavanshi ...Appellants

V/s.

Shrirang Haribhau Jadhav ...Respondent

Mr.Mohan Pungliya for the Appellants

Mr.M.D.Hombalkar for the Respondent.

CORAM: ABHAY.S.OKA,J.
DATED: JUNE 22, 2004

JUDGMENT:

1. Heard the learned Counsel appearing for the Appellants/original Plaintiffs. On December 1, 1987 this Court admitted the Second Appeal observing that ground No.1 of Memorandum of Appeal appears to be the substantial question of law.

Ground No.1 reads thus:

. "The Lower Courts failed to consider that the alleged sale deeds namely Exh.38 and Exh.54 are void in view of the provisions of section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 as no sanction has been obtained from the Collector for the

transfer ?"

2. The learned Counsel appearing for the Appellant submitted that sale deed executed by the Appellants dated 14th May 1970 in favour of the Respondent is null and void and same is hit by provisions of Section 31 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the said Act of 1947). He submitted that the consolidation scheme may not be applicable on the date of execution of the Agreement for sale, the consolidation scheme was however, made applicable before the sale deed was executed. He submitted that possession of area admeasuring 5 gunthas constituting 1/3rd portion of Survey No.311 was purportedly handed over to the Respondent at the time of execution of the Agreement and therefore a fragment is clearly created as a result of the said transaction.

3. I have considered the submissions made by the learned Counsel for the Appellant. The finding of the Appellate Court is that in the Consolidation Scheme Gat Nos.1696, 1504 and 1595 were allotted to the Respondent corresponding to 1/3rd portion of

survey No.311 which was purchased by the Respondent from the Appellant. The Appellate Court therefore came to the conclusion that bar created by 31(1) of the said Act of 1947 will have no application.

4. It was for the Appellant to establish as to what is the area of the fragment and that as a result of the sale a fragment was created. As Gat numbers were allotted to the property sold, it is very clear that fragments were not created. There is neither illegality nor perversity in the findings recorded by the Appellate Court. Hence there is no merit in the Second Appeal.

5. Second Appeal is dismissed with no order as to costs.

JUDGE